

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

NOV 23 2009

JAMES N. HATTEN, CLERK
By: *[Signature]* Deputy ClerkPlaintiff's Name Gerald A. West
Inmate No. 54421-060
Address USP-P.O. Box 33
Terre Haute, Indiana 47808IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIAGERALD A WEST

(Name of Plaintiff)

(Case Number)

vs.

COMPLAINT

1 09-CV-3328Bivens Action [403 U.S. 388 (1971)]1. C/O C. PEOPLES
2. C/O ROSA

(Names of all Defendants)

I. Previous Lawsuits (list all other previous or pending lawsuits on back of this form):

A. Have you brought any other lawsuits while a prisoner? Yes ☒ No ☐B. If your answer to A is yes, how many? one
Describe previous or pending lawsuits in the space below.
(If more than one, use back of paper to continue outlining all lawsuits.)

1. Parties to this previous lawsuit:

Plaintiff Gerald A. WestDefendants 1. John Doe 1; John Doe 2; and John Doe 32. Court (if Federal Court, give name of District; if State Court, give name of County)
U.S. District Court, Eastern District of California3. Docket Number 1:09-CV-01277 4. Assigned Judge Lawrence J. O'Meara

5. Disposition (For example: Was the case dismissed? Was it appealed? Is it still pending?)

Still Pending6. Filing date (approx.) 09-27-2009 7. Disposition date (approx.) Still Pending

II. Exhaustion of Administrative Remedies

A. Is there an inmate appeal or administrative remedy process available at your institution?

Yes ☒ No ☐

B. Have you filed an appeal or grievance concerning ALL of the facts contained in this complaint?

Yes ☒ No ☐ *A Tort Claim Was timely File in Regional Office.*

If your answer is no, explain why not _____

C. Is the process completed?

Yes ☒ If your answer is yes, briefly explain what happened at each level.

*I Filed grievances, which went unanswered, so I
Filed a Tort Claim No. TRT-SER-2009-01517, with the FBOp's
South Regional Office. That Tort Claim was subsequently denied
on May 22, 2009.*

No ☐ If your answer is no, explain why not.

NOTICE: Pursuant to the Prison Litigation Reform Act of 1995, "[n]o action shall be brought with respect to prison conditions under [42 U.S.C. § 1983], or any other Federal law, by a prisoner confined in any jail, prison, or other correctional facility until such administrative remedies as are available are exhausted." 42 U.S.C. § 1997e(a). If there is an inmate appeal or administrative remedy process available at your institution, you may not file an action under Section 1983, or any other federal law, until you have first completed (exhausted) the process available at your institution. You are required to complete (exhaust) the inmate appeal or administrative remedy process before filing suit, regardless of the relief offered by the process. Booth v. Churner, 532 U.S. 731, 741 (2001); McKinney v. Carey, 311 F.3d 1198, 1999 (9th Cir. 2002). **Even if you are seeking only money damages and the inmate appeal or administrative remedy process does not provide money, you must exhaust the process before filing suit.** Booth, 532 U.S. at 734.

III. Defendants

(In Item A below, place the full name of the defendant in the first blank, his/her official position in the second blank, and his/her place of employment in the third blank. Use item B for the names, positions and places of employment of any additional defendants.)

- A. Defendant C. Peoples is employed as an Correctional Officer at USP/FCI Atlanta, Federal Bureau of Prisons.
- B. Additional defendants Ms. Rosa, is employed as an Correctional Officer at the USP/FCI Atlanta, Federal Bureau of Prisons.

IV. Statement of Claim

(State here as briefly as possible the facts of your case. Describe how each defendant is involved, including dates and places. Do not give any legal arguments or cite any cases or statutes. Attach extra sheets if necessary.)

On 10-03-2007, while I was being housed at the USP/FCI Atlanta, DCU # cell 334, I complained to Correctional Officer, C. Peoples, that I had not had a shower in 6 days and wanted to speak to a Lt., because C. Peoples had refused to give me a shower. C. Peoples became rude and threatened to beat me and then frame me for assaulting him. When I put my arm outside of the Food Slot to retrieve some ice, C. Peoples slammed my arm in the Food Slot injuring my arm. C. Peoples then rushed into my cell and grabbed me around my neck very tightly using excessive force, and severely injured my neck. I had to receive Medical attention to my neck. See: Exhibit #A (Medical Incident Report & treatment verification). I still suffer from the -

V. Relief.

(State briefly exactly what you want the court to do for you. Make no legal arguments. Cite no cases or statutes.)

I'm Seeking \$100,000.00 From the defendants in there individual and official Capacities; as Compensatory and/or Punitive damages for My injuries Sustained.

I'm Requesting that all Filing fees, and attorney fees be paid by the defendants.

I'm Requesting that My Neck be Medically repaired, and the defendants pay all Medical bills for said repair.

"go to Page # 2 of Statement of Claim."

I declare under penalty of perjury that the foregoing is true and correct.

Date

11/02/09

Signature of Plaintiff

X [Signature]

neck injury, which has caused permanent injury, and a growth on the neck. Ms. Rosa stood guard at the cell door and watched Peoples assault me. There I was braded down the hallway by Peoples while he continued to forcibly hold the neck. Peoples took me into an empty room where he further assaulted me, while Ms. Rosa stood guard at the door as a lookout causing her to be liable for the assault and in June I sustained from the excessive force.

There are affidavits from the stop above an investigation but I was not made aware as to their full findings. Staff at WSP/FCJ Atlanta has done nothing but try to sweep the incident under the rug. See: Exhibit # 13 pages 1-3, (Internal Affair Report).

(Re C. Peoples, filed a false incident report against me as well, in an attempt to cover up his misconduct but the incident report was subsequently dismissed by the WMA. See: Exhibit # 6 (the false incident report filed by C. Peoples).)

I filed a BOP and BOPg (grievances) but they were never answered. So I filed a BOP10 and BOP11, but they were not answered either. So I filed a Tort Claim See: Exhibits #1 and #2 (BOP10 and BOP11 grievances in which I filed).

I filed a Tort Claim as an exhaustion of remedies, and in an effort seeking compensation for the injuries sustained. See: (Tort Claim filed on November 29, 2008, labelled as Exhibit #E pages 1-4).

The Tort Claim was subsequently denied by the South east Regional Office du May 22 2009. See: Exhibit #1 (Tort Claim denial - Tort Claim by Mr. TPT. SEP. 2009 - 01512).

The Claimant now files a 43 years Action against the defendants for violating his 8th Amendment Constitutional rights for use of excessive force, and for causing a personal injury to his neck and back, by use of unauthorized excessive force. Excessive force constitutes cruel and unusual punishment which violates the Eighth Amendment. See: Hudson v. McMillan, 503 U.S. 1 (1992). The force used by C. Peoples was unauthorized, he cannot put his hand around the neck and choke the severely, he cannot slam the arm in a food slot and he cannot beat of a South He. And Ms. Rosa cannot stand guard at the door for him as a foot out and allow the excessive force to take place without intervention. C. Peoples used choke and malicious means to choke and beat he and his infant was clearly to harm he I was already restrained and in compliance when he choked and beat me. This violated the Eighth Amendment And he and Rosa (C. Peoples and Rosa) must be held liable for the physical injuries. See: Estate of Davis by Osterfeld v. Del. G.W. - 115 F.3d 1388 (3d Cir. 1997). Therefore, the Claimant is requesting that he be awarded damages. Sought.

Date: 11, 02, 09.

X Gerald West

BP-A362.060
SEP 05

INMATE INJURY ASSESSMENT AND FOLLOWUP (Medical) FORM

U.S. DEPARTMENT OF JUSTICE

FEDERAL BUREAU OF PRISONS

1. Institution <i>WSP Atlanta</i>	2. Name of Injured <i>Gerald West</i>	3. Register Number <i>54421-060</i>
4. Injured's Duty Assignment <i>DCU II unassigned</i>	5. Housing Assignment <i>DCU II 336</i>	6. Date and Time of Injury <i>10-3-07 1700</i>
7. Where did Injury Happen (Be specific as to location) <i>DCU II 336</i>	Work Related? <input type="checkbox"/> Yes <input checked="" type="checkbox"/> No	8. Date & Time Reported for Treatment <i>10-3-07 1925</i>
9. Subjective: A) Cause of Injury (Inmate's Statement of how injury occurred): <i>Officer hand cuffed me hitting my back and grabbed</i>		
B) Symptoms (as reported by inmate): <i>one by the neck</i>		
Signature of Patient <i>Gerald West</i>		
10. Objective: (Observations or Findings from Examination) <i>Noted abrasion & redness to neck area no other noted injuries no trauma noted to trachea No complications</i>	X-Rays Taken _____ Not Indicated _____ X-Ray Results _____	
11. Assessment: (Analysis of Facts Based on Subjective and Objective Data) <i>Noted abrasion & redness to neck area</i>		
12. Plan: (Diagnostic Procedures with Result, Treatment and Recommended Follow-up) <i>Evaluate Return to care of Lt</i>		
a. No Medical Attention (Check applicable) <input checked="" type="checkbox"/> a. No Medical Attention <input type="checkbox"/> b. Minor First Aid <input type="checkbox"/> c. Hospitalization <input type="checkbox"/> d. Other (Explain) _____ <input type="checkbox"/> e. Pain assessment: (Optional) Mild Moderate Severe 1--2--3--4--5--6--7--8--9--10 <i>[Signature]</i>		
Signature of Physician or Physician Assistant		

Original- Medical File; Canary - Safety; Pink - Supervisor; Goldenrod - Correctional Supervisor

(This form may be replicated via WP)

Replaces BP-A362.060 of FEB 05

(b)(6), (b)(7)(c)

Exhibit # A G.W.

FEDERAL BUREAU OF PRISONS

Office of Internal Affairs

09 - 16 - 2008

Page 1 of 2

Matter ID OIA-2008-01279 OIG Case Number 2008001845 Name (b)(6), (b)(7)c Field Office STL
 Region SER Institution ATL Open Date 01/15/2008 Number of Subjects 2
 Date Allegation Rptd. 01/08/2008 Investigated By OIG Category 1

CASE DESCRIPTION

(b)(6), (b)(7)c Physical Abuse of an Inmate

CASE SUMMARY

In a letter dated January 8, 2008, inmate Gerald West, #54421-060, claims that on October 3, 2007, he ask (b)(6), (b)(7)c if he could speak to a lieutenant regarding showers and recreation (b)(6), (b)(7)c allegedly refused. West claims that when he reached through the food slot in his cell to get a cup of ice (b)(6), (b)(7)c slammed his arm in the food slot. West then asked to see a nurse (b)(6), (b)(7)c allegedly refused and told West if he asked again he would "beat him down" and write an assault charge on him. West states he again asked to see a nurse. He claim (b)(6), (b)(7)c opened his cell door and ordered him to lay down on the floor and submit to restraints. West claim (b)(6), (b)(7)c grabbed his neck and started choking him. West claim (b)(6), (b)(7)c removed him from cell and began parading him up and down the unit chanting, "This is what happens to stupid niggers." West claims he was escorted to an empty cell, we (b)(6), (b)(7)c locked and beat him while (b)(6), (b)(7)c watched. West claims he was left handcuffed in the cell for 1/2 hour. West currently is incarcerated at USP Atwater. An Inmate Injury Assessment and Follow Up dated October 3, 2007, indicates West sustained abrasions and redness to his neck. No medication attention was needed.

OTHER COMMENTS

FINAL DISPOSITION

(b)(6), (b)(7)c

(b)(6), (b)(7)c

Accordingly, the allegation of Physical Abuse of an Inmate against (b)(6), (b)(7)c is not sustained.

COMPLAINANT INFORMATION

Complainant Name WEST, GERALD A. Title/Inmate Reg. No. 54421-060

VICTIM INFORMATION

Victim Name WEST, GERALD A. Title/Inmate Reg. No. 54421-060

OIG DISPOSITION

Referred Date 01/09/2008 Deferred Date Deferred By MIAMI FIELD OFFICE
 Disposition INVE Comments

EVENTS

Date Scheduled 01/09/2008 Suspense/Due Date 02/09/2008 Description PENDING DEFERRAL BY OIG
 Comments
 Date Scheduled 01/30/2008 Suspense/Due Date 05/29/2008 Description ON-GOING OIG INVESTIGATION
 Comments
 Date Scheduled 07/09/2008 Suspense/Due Date Description ON-GOING OIG INVESTIGATION
 Comments (b)(6), (b)(7)c advised ongoing investigation (b)(6), (b)(7)c

CASE STATUS

Status CLOS Disposition NSUS Close Date 09/16/2008

Exhibit # B - Page 1 of 3

FEDERAL BUREAU OF PRISONS
OFFICE OF INTERNAL AFFAIRS
SUBJECT REPORT

01/17/2008

Page 1 of 2

Matter ID: OIA-2008-01279

Agent: (b)(6), (b)(7)c

SUBJECT INFORMATION

Name: (b)(6), (b)(7)c

Region:

(b)(6), (b)(7)c

Duty:

REPORTED ALLEGATIONS

Allegation Master Code	101	Allegation Sub-Code	001D	Reported Date	01/15/2008	Legal Action	Sentence Date
Offense							
Comments							

SUSTAINED ALLEGATIONS**STATUS**

Disposition:	Close Date:	Disciplinary Action:	Days Suspended:
Comments:			

DEMOGRAPHIC INFORMATION

(b)(6), (b)(7)c

(b)(6), (b)(7)c

Exhibit #B - Page 2 of 3

FEDERAL BUREAU OF PRISONS
Office of Internal Affairs
SUBJECT REPORT

01/17/2008

Page 2 of 2

SUBJECT INFORMATION

(b)(6), (b)(7)c
(b)(6), (b)(7)c

REPORTED ALLEGATIONS

Allegation Master Code	101	Allegation Sub-Code	001D	Reported Date	01/15/2008	Legal Action	Sentence Date
Offense							
Comments							

SUSTAINED ALLEGATIONS**STATUS**

Disposition:	Close Date:	Disciplinary Action:	Days Suspended:
Comments:			

DEMOGRAPHIC INFORMATION

(b)(6), (b)(7)c
(b)(6), (b)(7)c

Exhibit #B - Page 3 of 3

Federal Bureau of Prisons

From: 172-1-6-9410 A 24421 600 1 200 Alma Lee
LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL[illegible]

DATE 12-2-84

SIGNATURE OF REQUESTER

Part B - RESPONSE

DATE	REGIONAL DIRECTOR
If dissatisfied with this response, you may appeal to the General Counsel. Your appeal must be received in the General Counsel's Office within 30 calendar days of the date of this response.	

THIRD COPY: WARDEN'S ADMINISTRATIVE REMEDY FILE

CASE NUMBER: _____

Part C - RECEIPT

CASE NUMBER: 44-38861-111

Return to: _____

LAST NAME FIRST MIDDLE INITIAL	REG. NO.	UNIT	INSTITUTION
--------------------------------	----------	------	-------------

SUBJECT: _____

DATE 5/1/14 SIGNATURE, RECIPIENT OF REGIONAL APPEAL _____

U.S. Department of Justice

Central Office Administrative Remedy Appeal

Federal Bureau of Prisons

Type or use ball-point pen. If attachments are needed, submit four copies. One copy each of the completed BP-229(13) and BP-230(13), including any attachments must be submitted with this appeal.

From: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

Part A - REASON FOR APPEAL

On 11/17/09, the OAC according to the Bureau request did not being answered. My unit had not payed and could not receive medication and give me have more BP's because BP 10 and BP 11. So I can not find a proper appeal.

2-1-09
 DATE

L.H. K. J.
 SIGNATURE OF REQUESTER

Part B - RESPONSE

 DATE

 GENERAL COUNSEL

THIRD COPY: WARDEN'S ADMINISTRATIVE REMEDY FILE

CASE NUMBER: _____

Part C - RECEIPT

CASE NUMBER: _____

Return to: _____
 LAST NAME, FIRST, MIDDLE INITIAL REG. NO. UNIT INSTITUTION

SUBJECT: _____

 DATE SIGNATURE OF RECIPIENT OF CENTRAL OFFICE APPEAL

Exhibit # 17

* Page 1 of 3 Pages *

CLAIM FOR DAMAGE, INJURY, OR DEATH		INSTRUCTIONS: Please read carefully the instructions on the reverse side and supply information requested on both sides of the form. Use additional sheet(s) if necessary. See reverse side for additional instructions.		FORM APPROVED OMB NO. 1105-0008	
1. Submit To Appropriate Federal Agency: Federal Bureau of Prisons South Central Regional Office 4211 Cedar Springs Road Dallas, Texas 75219			2. Name, Address of claimant and claimant's personal representative, if any. (See instructions on reverse.) (Number, street, city, State and Zip Code) Mr. Gerald West Fed. Reg. # 54421-060 P.O. Box 33 Terre Haute, Indiana 47808		
3. TYPE OF EMPLOYMENT <input type="checkbox"/> MILITARY <input checked="" type="checkbox"/> CIVILIAN	4. DATE OF BIRTH 01 July '66	5. MARITAL STATUS single	6. DATE AND DAY OF ACCIDENT 03 October 2007	7. TIME (A.M. or P.M.) 5:07 p.m.	
8. Basis of Claim (State in detail the known facts and circumstances attending the damage, injury, or death, identifying persons and property involved, the place of occurrence and the cause thereof) (Use additional pages if necessary.) " SEE ATTACHED "					
9. PROPERTY DAMAGE					
NAME AND ADDRESS OF OWNER, IF OTHER THAN CLAIMANT (Number, street, city, State, and Zip Code) N/A					
BRIEFLY DESCRIBE THE PROPERTY, NATURE AND EXTENT OF DAMAGE AND THE LOCATION WHERE PROPERTY MAY BE INSPECTED. (See instructions on reverse side.) N/A					
10. PERSONAL INJURY/WRONGFUL DEATH					
STATE NATURE AND EXTENT OF EACH INJURY OR CAUSE OF DEATH, WHICH FORMS THE BASIS OF THE CLAIM. IF OTHER THAN CLAIMANT, STATE NAME OF INJURED PERSON OR DECEDENT. Multiple lacerations to the neck, neck and back strain and continued pain and suffering.					
11. WITNESSES					
NAME		ADDRESS (Number, street, city, State, and Zip Code)			
John/Jane Doe Medical Personnel C/o Rosa		USP Atlanta, Atlanta, Georgia USP Atlanta, Atlanta, Georgia			
12. (See instructions on reverse) AMOUNT OF CLAIM (in dollars)					
12a. PROPERTY DAMAGE N/A	12b. PERSONAL INJURY \$100,000.00	12c. WRONGFUL DEATH N/A	12d. TOTAL (Failure to specify may cause forfeiture of your rights.) \$ 100,000.00		
I CERTIFY THAT THE AMOUNT OF CLAIM COVERS ONLY DAMAGES AND INJURIES CAUSED BY THE ACCIDENT ABOVE AND AGREE TO ACCEPT SAID AMOUNT IN FULL SATISFACTION AND FINAL SETTLEMENT OF THIS CLAIM.					
13a. SIGNATURE OF CLAIMANT (See instructions on reverse side.)			13b. Phone number of signatory N/A	14. DATE OF CLAIM 20 Nov 2008	
CIVIL PENALTY FOR PRESENTING FRAUDULENT CLAIM The claimant shall forfeit and pay to the United States the sum of \$2,000 plus double the amount of damages sustained by the United States. (See 31 U.S.C. 3729.)			CRIMINAL PENALTY FOR PRESENTING FRAUDULENT CLAIM OR MAKING FALSE STATEMENTS Fine of not more than \$10,000 or imprisonment for not more than 5 years or both. (See 18 U.S.C. 287, 1001.)		

Exhibit # E. - Page 1 of 4

PRIVACY ACT NOTICE

This Notice is provided in accordance with the Privacy Act, 5 U.S.C. 552a(e)(3), and concerns the information requested in the letter to which this Notice is attached.

A. **Authority:** The requested information is solicited pursuant to one or more of the following: 5 U.S.C. 301, 38 U.S.C. 501 et seq., 28 U.S.C. 2671 et seq., 28 C.F.R.

B. **Principal Purpose:** The information requested is to be used in evaluating claims.

C. **Routine Use:** See the Notices of Systems of Records for the agency to whom you are submitting this form for this information.

D. **Effect of Failure to Respond:** Disclosure is voluntary. However, failure to supply the requested information or to execute the form may render your claim

INSTRUCTIONS

Complete all items - Insert the word **NONE** where applicable

A CLAIM SHALL BE DEEMED TO HAVE BEEN PRESENTED WHEN A FEDERAL AGENCY RECEIVES FROM A CLAIMANT, HIS DULY AUTHORIZED AGENT, OR LEGAL REPRESENTATIVE AN EXECUTED STANDARD FORM 95 OR OTHER WRITTEN NOTIFICATION OF AN INCIDENT, ACCOMPANIED BY A CLAIM FOR MONEY DAMAGES IN A **SUM CERTAIN** FOR INJURY TO OR LOSS OF

PROPERTY, PERSONAL INJURY, OR DEATH ALLEGED TO HAVE OCCURRED BY REASON OF THE INCIDENT. THE CLAIM MUST BE PRESENTED TO THE APPROPRIATE FEDERAL AGENCY WITHIN **TWO YEARS** AFTER THE CLAIM ACCRUES.

Any instructions or information necessary in the preparation of your claim will be furnished, upon request, by the office indicated in Item #1 on the reverse side. Complete regulations pertaining to claims asserted under the Federal Tort Claims Act can be found in Title 28, Code of Federal Regulations, Part 14. Many agencies have published supplemental regulations also. If more than one agency is involved, please state each agency.

The claim may be filed by a duly authorized agent or other legal representative, provided evidence satisfactory to the Government is submitted with said claim establishing express authority to act for the claimant. A claim presented by an agent or legal representative must be presented in the name of the claimant. If the claim is signed by the agent or legal representative, it must show the title or legal capacity of the person signing and be accompanied by evidence of his/her authority to present a claim on behalf of the claimant as agent, executor, administrator, parent, guardian or other representative.

If claimant intends to file claim for both personal injury and property damage, claim for both must be shown in Item 12 of this form.

(b) In support of claims for damage to property which has been or can be economically repaired, the claimant should submit at least two itemized signed statements or estimates by reliable, disinterested concerns, or, if payment has been made, the itemized signed receipts evidencing payment.

(c) In support of claims for damage to property which is not economically repairable, or if the property is lost or destroyed, the claimant should submit statements as to the original cost of the property, the date of purchase, and the value of the property, both before and after the accident. Such statements should be by disinterested competent persons, preferably reputable dealers or officials familiar with the type of property damaged, or by two or more competitive bidders, and should be certified as being just and correct.

(d) Failure to completely execute this form or to supply the requested material within two years from the date the allegations accrued may render your claim "invalid". A claim is deemed presented when it is received by the appropriate agency, not when it is mailed.

The amount claimed should be substantiated by competent evidence as follows:

(a) In support of the claim for personal injury or death, the claimant should submit a written report by the attending physician, showing the nature and extent of injury, the nature and extent of treatment, the degree of permanent disability, if any, the prognosis, and the period of hospitalization, or incapacitation, attaching itemized bills for medical, hospital, or burial expenses actually incurred.

Failure to specify a sum certain will result in invalid presentation of your claim and may result in forfeiture of your rights.

Public reporting burden for this collection of information is estimated to average 15 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden,

to Director, Torts Branch

Civil Division

U.S. Department of Justice

Washington, DC 20530

and to the

Office of Management and Budget

Paperwork Reduction Project (1105-0008)

Washington, DC 20503

INSURANCE COVERAGE

In order that subrogation claims may be adjudicated, it is essential that the claimant provide the following information regarding the insurance coverage of his vehicle or property.

15. Do you carry accident insurance? ☐ Yes, if yes, give name and address of insurance company (Number, street, city, State, and Zip Code) and policy number. ☐ No

N/A

16. Have you filed claim on your insurance carrier in this instance, and if so, is it full coverage or deductible?

NO

17. If deductible, state amount

N/A

18. If claim has been filed with your carrier, what action has your insurer taken or proposes to take with reference to your claim? (It is necessary that you ascertain these facts)

N/A

19. Do you carry public liability and property damage insurance? ☐ Yes, if yes, give name and address of insurance company (Number, street, city, State, and Zip Code) ☐ No

N/A

SF-95 Continuation Sheet

PREAMBLE

This SF-95 Administrative Tort Claim involves the brutal attack upon the person of prisoner Gerald West, one committed to the care, custody and control of the Federal Bureau of Prisons (FBOP), by employees and/or officers of the United States Government. The Claimant has suffered and continues to suffer unnecessarily as a direct result of the unprofessional actions of said employees/officers.

STATEMENT OF CLAIM

On or about 03 October 2007, while confined at the United States Penitentiary at Atlanta, Georgia, Claimant, Gerald West asked S.O.S. C. Peoples (hereinafter " Peoples " or " tortfeasor " as the context may, from time to time, require) for a shower.

West had not had a shower in approximately six (6) calendar days. West was not in any way attempting to incite trouble with Peoples. When Peoples became belligerent toward West, West requested to speak to a lieutenant, which is the custom when a subordinate officer is intent upon running afoul of policies, customs or practices put in place to insure the orderly operation of the institution.

While waiting for the lieutenant, West stuck his arm through the food slot to receive some ice. Upon seeing West's arm, Peoples slammed the slot closed, injuring West's arm. When West asked to be seen by medical for his arm, Peoples threatened to beat him down and use the disciplinary process to frame West for assault.

When West again asked for medical attention, Peoples ran in West's cell, ordering him into restraints. Instead of simply restraining (although even that restraint was unnecessary since West was non-combative and locked in a closed cell where he was no threat to himself or others) West, Peoples proceeded to assault West by applying an unauthorized choke hold to West's neck, inhibiting West's ability to breathe.

Peoples then, in a rage, paraded the limp body of West up and down the walkway as an example to other prisoners saying " This is what happens to stupid niggers. "

DISCUSSION

Peoples was not authorized by FBOP policy regarding the use of force to come into the cell of West and apply any choke hold as a punishment for asking about a shower that he was otherwise entitled to. The result of this unauthorized use of force is that Mr. West was significantly injured by Peoples and subjected to victimization under the Hate Crimes legislation by one of the same race. This treatment is abhorrent to the concept of ordered liberty and runs afoul of basic concepts of fairness and decency that

SF-95 Continuation Sheet

mark the progress of our maturing society.

Prisoners of these United States are not to be treated as inhuman trophies for attention-starved corrections officials to vindicate their manliness. Persons are sent to correctional facilities, away from the society at large, as punishment for crime -- not to be punished. If Mr. West had done something to violate a rule or procedure of the institution or of the FBOP, certainly there is a mechanism in place called a disciplinary process that Peoples could have utilized without resort to violent acts and demeaning taunting in violation of the FBOP Standard of Employee Conduct found at PS 3420.09.

But there is a long-standing custom or usage of unnecessary violence towards prisoners in the FBOP that operates with the force and effect of a written law without ever being memorialized in any official writing. It is this custom or usage that is at the heart of the violence perpetrated against Mr. West.

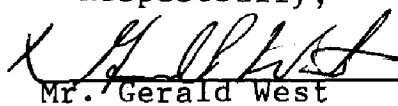
Mr. west has sustained significant injuries and should be compensated in the amount of \$ 100,000.00 (one-hundred thousand dollars).

There is currently a cover-up of the incident taking place at the USP Atlanta. However, a prudent review of the record will indicate that the foregoing took place on the date and time herein described.

Thanking you in advance for your valuable time and attention in this matter.

Respectfully,

11/20/09
(date)

X 
Mr. Gerald West

BP-288(52)
 JANUARY 1988



U.S. Department of Justice

Federal Bureau of Prisons

Southeast Regional Office

*Building 2000
3800 Camp Creek Parkway, S.W.
Atlanta, Georgia 30331-6226*

May 22, 2009

CERTIFIED MAIL
7007 1490 0001 9020 1872

Gerald A. West
Reg. No. 54421-060
USP THP
P.O. Box 33
Terre Haute, IN 47808

RE: Administrative Tort Claim Number TRT-SER-2009-01517

Dear Claimant:

Your claim has been considered for administrative settlement under the Federal Tort Claims Act (FTCA), Title 28 United States Code (U.S.C.) Section 2672 et seq., and authority granted by Title 28 Code of Federal Regulations (C.F.R.) Section 0.172. Section 2672 of the FTCA delegates to each federal agency the authority to consider, determine and settle any claim for money damages against the United States for loss of personal property or injury caused by the negligent or wrongful act or omission of any employee of the agency while acting within the scope of his office or employment.

Your claim dated November 20, 2008, asserts that on October 3, 2007, at the U.S. Penitentiary in Atlanta, Georgia, you asked for a shower and a correctional officer became belligerent toward you, so you asked to see a Lieutenant. While waiting for the Lieutenant, you stuck your arm through a food slot in your cell door to get some ice, and the officer slammed the slot's door on your arm injuring it. You allege he also threatened to beat you and to frame you for assault. Further, you allege when you asked for medical attention, the officer ran into your cell, ordered you into restraints, and applied a choke hold to your neck, causing significant injuries. You allege the officer then paraded your limp body in front of other inmates and told them "[t]his is what happens to stupid niggers." You assert you suffered multiple lacerations to your neck, back strain and pain. You want \$100,000 from the United States as damages.

We have reviewed your claim along with reports from appropriate staff members. Staff report that after serving you a tray with the dinner meal through a food slot in your cell door, a correctional officer was trying to close the slot cover when you began kicking it to prevent him from closing it, resulting in an injury to the officer. You eventually submitted to placement in

Exhibit #F Page 1 of 2

Letter to Gerald A. West, Reg. No. 54421-060
RE: Administrative Tort Claim Number TRT-SER
May 22, 2009

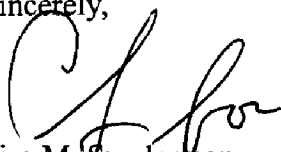
restraints and were moved to another cell by that officer and another. Both you and the injured officer were given medical evaluations by a physician assistant. He observed an abrasion and redness to your neck area with no other injuries, and no trauma to your trachea or complications. He determined you needed no medical attention. The officer was found to have sustained an injury to his hand, an abrasion to one of his knuckles with mild swelling, and he was given minor first aid. There is no information the officer made the statement you attribute to him or displayed you to other inmates as an example.

Based on the above information, there is no evidence of staff negligence. To the extent you raise constitutional claims for excessive use of force and other mistreatment, civil rights claims are not within the purview of the FTCA. In accordance with 28 U.S.C. § 1346(b), the FTCA is a limited waiver of sovereign immunity providing compensation for property loss or personal injury which results from the negligent or wrongful act or omission of an employee of the United States who is acting within the scope of his employment. This statute does not establish a compensatory scheme or cause of action against the United States for violations of the U.S. Constitution.

Therefore, based on the above information, other than your own self-serving assertion, there is no evidence to support your allegations that you have suffered any injuries due to the negligent acts or omissions by the United States. Therefore, your claim is denied.

You are advised that if you are dissatisfied with our determination in this matter, you are afforded six (6) months from the date of the mailing of this communication within which to bring suit in the appropriate United States District Court.

Sincerely,



Lisa M. Sunderman
Regional Counsel

cc: USP Atlanta / ATTN: FTCA Coordinator

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF GEORGIA

GERALD A. WEST
PLAINTIFF'S

- VS -

1. C/O E. PEOPLES
2. C/O ROSA
DEFENDANT'S

PROOF OF SERVICE

FILED IN CLERK'S OFFICE
U.S.D.C. Atlanta

NOV 23 2009

JAMES N. HATTELL, CLERK
By [Signature] Deputy Clerk

NOTICE OF FILING AND CERTIFICATE OF SERVICE

THE UNDERSIGNED CERTIFIES THAT HE FILED THIS BIVENS ACTION (403 U.S. 388 (1971)); WITHIN THE N.D.S. DISTRICT COURT; ON 11/17/09; AND SERVED A COPY OF IT ON THE FEDERAL BUREAU OF PRISONS, 320 First St N.W. Washington D.C. 20534

Dated 11/17/2009

[Signature]
MR. GERALD A. WEST
54421-060
P.O. BOX 33
TERRE HAUTE, INDIANA
47808
PRO SE PLAINTIFF